IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 738 of 1998
SPECIAL CIVIL APPLICATION No 4773 of 1998
SPECIAL CIVIL APPLICATION No 4810 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge

Sr.No.(1 & 2 Yes) and Sr.No.(3,4,5 No.)

VALLABHVIDYANAGAR MAZDOOR UNION
Versus
STATE OF GUJARAT

Appearance:
IN SPECIAL CIVIL APPLICATION NO.738 of 1998.

MR DS VASAVADA for Petitioner
MR VB GHARANIYA, AGP for Respondent No. 1
MR VITHALBHAI PATEL, SENIOR ADVOCATE for Respondent No. 2

SPECIAL CIVIL APPLICATION No 4773 of 1998

BARODA RAYON CORPORATION LTD.

Versus

DY COMMISSIONER OF LABOUR

Appearance:

1. Special Civil Application No. 4773 of 1998

MR KM PATEL for Petitioner

MR TR MISHRA for Respondent No. 3

MR NR SHAHANI for Respondent No. 2

MR VB GHARANIYA, AGP for Respondent No.1

SPECIAL CIVIL APPLICATION No 4810 of 1998

BARODA RAYON CORPORATION EMPLOYEES UNION

Versus

DY COMMISSIONER OF LABOUR

Appearance:

MR NR SHAHANI for Petitioner

MR VB GHARANIYA, AGP for Respondent No.1

MR KM PATEL for Respondent No. 2

MR TR MISHRA for Respondent No.3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 31/07/98

CAV JUDGEMENT

Rule. In view of facts and circumstances of these three petitions they are taken for final hearing with the consent of learned advocates for both the sides.

2. The three petitions are pertaining to one and the same question of the law. Therefore they are heard together in view of involvement of common question of law, and in the interest of the parties and with consent of all the parties. I have permitted besides the learned advocates for the parties in these three petitions, Mr. P. Chidambaram, Working President of Gujarat Mazdoor Sangh and Mr. H.K. Rathod, learned advocate representing Gujarat State Road Transport Corporation

Karmachari Sangh and Other unions to address this court.

3. The Special Civil Application No.738/98 is filed by Vallabh Vidayanagar Mazdoor Union, seeking writ of mandamus and to direct the respondents to hold an election in Amul Dairy-respondent no.2 for the purpose of giving the recognition to the petitioner-union. It is claim of the petitioner that the petitioner-union is registered under Trade Union Act, 1926 and it has got enrolling of the workmen of respondent no.2 and more than 50% of the workmen of respondent no.2 are the members of the said union and therefore, the petitioner's union is entitled to get the status of recognised union. This union has made representation to the respondent no.1 by letter dated 16-6-97 to give such recognition. Thereafter, as desired by the respondent no.1 Deputy Commissioner of Labour, all the information sought by him were supplied. But, even in spite of the same, no recognition is given to the petitioner. But by letter dtd.5.11.97, petitioner is informed that besides the petitioner-union, other four unions are operating in the said employer, and employer does not wish to record approval to any of the unions. According to the petitioner, the claim of the respondent no.2 that besides the petitioner, there are four other unions operating there is false. Petitioner, therefore, seeks a direction to direct the respondent no.1 and 2 to hold an election in order to find out as who is having the majority of the workmen and then to issue the recognition of a recognised union to the petitioner.

4. The claim of the petitioner is resisted by the respondent no.2, in this Civil Application No.738/98. It is contended that the petitioner has neither any fundamental right nor any statutory right to get a recognition. There is no legal obligation on the respondent no.1 to hold an election and to see which of the labour unions having majority and the respondent no.2 could not be compelled to give recognition to either the petitioner union or any other union. Thus, it is contended that no petition under Article 226 could be entertained for giving the recognition to an union.

5. The Special Civil Application No.4773/98 and Special Civil Application No. 4810/98 are filed respectively by the employer and the recognised union of the Baroda Rayon Corporation Ltd., to challenge the order issued by the Deputy Commissioner of Labour on 17.6.98, by which, the petitioner in petition No. 4773/98 namely the Baroda Rayon Corporation Ltd., is directed to hold an election in order to find out which of the two unions

namely respondent no.2 Baroda Rayon Corporation Employees Union and respondent no.3 Akhil Bharatiya Udyog Kamdar Sangh are having the majority of the workmen working with the petitioner. It is contended by the petitioner that neither the Industrial Disputes Act nor any other Act empower the Labour Commissioner or the Deputy Labour Commissioner to issue such a direction to the employer. The Labour Commissioner or the Deputy Labour Commissioner have no statutory right to issue such a direction. As the said direction is illegal and is not authorised by any statue, the action of the Deputy Labour Commissioner in writing the said letter should be declared illegal and the same be quashed and set aside. The Special Civil Appl.No. 4810/98 is filed by the Baroda Rayon Corporation Employees Union-respondent no.2 in Special Civil Appln. 4773/98 raising the same and similar contention as raised in Special Civil Appln. No. 4773/98. This petitioner in Petition No.4810/98 is the recognised union of the petitioner in Petition No.4773/98.

6. The respondent no.3 in this petition No.4773/98 who is also respondent no.3 in Special Civil Appln. No.4810/98 namely Akhil Bharatiya Udhyogk Kamdar Sangh has contended that under the "Code of Discipline in industry", the Labour Commissioner/Deputy Labour Commissioner is entitled to write such a letter to the industry. It is contended that in order to achieve industrial peace, the procedure laid down in "Code of Discipline in industry" must be followed and the union which is having majority of the workmen must be given recognition by the industry. It is submitted that the "code of discipline in industry" mentioned in the National Commission of Labour has the force of the statue, and therefore, the procedure and principles laid down in "code of discipline in industry" must be enforced. It is contended by Mr. T.R. Mishra, who is representing the respondent no.3 before me, stated that there must be recognition of an union by an industry because whenever the industry wants to have dialogue for the purpose of settling the industrial dispute, the said dialogue could be with only a recognised union. Similarly, if any settlement of an industrial dispute is to take place, it must take place between the industry and the recognised union of an industry. Therefore, in these circumstances, the action of the respondent no.1 in directing the industry to hold an election in order to find out which of the two unions is having majority is quite proper and just.

7. At the outset it must be stated neither Shri T.R.

Mishra nor Mr. V.S. Vasavada, the learned advocates representing the two Unions namely and respectively AKHIL BHARATIYA UDHYOGK KAMDAR SANGH and VALLABH VIDYANAGAR MAZDOOR UNION was in the position to point out any provision under Industrial Disputes Act, 1947 or under any other Act which lays down that the industry must give recognition to atleast one union of the workmen working in the industry. Similarly Mr. P. Chindabaram was also not in a position to point out the same. Similarly I had asked all of them to point the provisions any Act or any rules framed under any Act either by the Central Government or the State Government which creates a statutory duty for or obligation on the Labour Commissioner/Deputy Labour Commissioner or any officer working under them to give recognition to an union of the workmen.

8. No doubt both the learned advocates have drawn my attention to Clause I(2) and (15) and II(3) of the Fifth Schedule of the Industrial Disputes Act 1947. The section 2 (ra) of the Industrial Disputes Act defines that "unfair labour practice" means any of the practice specified in Fifth Schedule. Fifth Schedule only enlists the practices which would amount to "unfair labour practice". Bearing this aspect in mind one must read and consider those provisions which are referred by both the counsels. They are as under:

I. on the part of employers and trade unions of employers;

2. To dominate, interfere with or contribute support, financial or otherwise to any trade union, that to say:

(b) an employer showing partiality or granting favour to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not recognised trade union.

15. To refuse to bargain collectively in good faith with the recognised trade union.

II. on part of workmen and trade union of workmen.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.

From the above quoted provisions it is not at all possible to hold that an industry must give recognition to a union of it's workmen. On the contrary if the provisions of I 2(b) are considered then that provision accepts that in an industry there may be more than one union of it's workmen and if none of them is not recognised then all of them must be treated equally. If the provisions of other two clauses quoted above are considered then it would be quite clear that in case if one union out of the unions of workmen is recognised by an industry then if one out of the industry and union of workmen refuses to bargain collectively in good faith with another then it will amount to unfair labour practice.

9. If the above provisions are considered then it would be quite clear it is for an industry itself to take it's own decision as to whether a union of workmen is to be given recognition by an industry or not. If an industry happened to give recognition then whenever it intends to have a dialogue and negotiations with the workmen and bargain with them it must be through that recognised union. It must be also stated here that it is also fairly admitted before me that in an industry there could be more than one recognised union. There is no statutory provision to give recognition to an union of workmen and that too for only one union. It is also necessary to refer to provisions of section 18 of Industrial Disputes Act. Sub-sec.(1) of section 18 lays down that in case of settlement otherwise than in course of conciliation proceeding shall be binding on the parties to the agreement. Therefore even in case of recognised union the settlement between an industry and a recognised union will be binding only on the members of that union. Even in case of settlement between the recognised union and an industry on account of any arbitration proceedings becomes binding on the non members of the recognised union as they are served with the notification under sub-section 3 A of section 10 A and are given an opportunity of presenting their case. In any settlement other than before an arbitrator, it will be binding even in case of taking place during reconciliation proceeding on the parties to the industrial dispute. On account of the recognition of an union an obligation is created in favour of an industry as well as an union that it cannot refuse to bargain collectively and if there happened to be a refusal it will amount to an unfair labour practice. No other benefit or right is created on account of giving recognition.

10. Mr. Vasavada, learned advocate for the petitioner in Special Civil Application No.738/1998 submitted that the claim of the petitioner is based on the "Code of Discipline in Industry" evolved in 16th Sessions of the Indian Labour Conference. He further submitted that the said "Code of Discipline" must be treated and recognised as a statutory provision. This view of Mr. Vasavada is endorsed and supported by Mr. T.R. Mishra as well as Mr. P. Chindambaram. As against this, Mr. Patel Senior Counsel appearing for the respondent no.2 in Special Civil Application No.4810/98, Mr. K.M. Patel, Advocate for the petitioner in SCA 4773/98, Mr. Shahani, learned advocate appearing for petitioner in Special Civil Appln No.4810/98 and Mr. H.K. Rathod submitted that the "Code of Discipline" has no statutory value and no recognition could be given to the same by the court and on the basis of "Code of Discipline" nobody could be given any relief by this court. Mr. Vasavada has cited before me the decision of Division Bench of Madras High Court in the case of TAMILNADU ELECTRICITY BOARD Vs. TAMILNADU ELECTRICITY BOARD ACCOUNTS AND EXECUTIVE STAFF UNION 1980 (2) L.L.J. 440. In this case, there is reference to two earlier decisions of Division Benches of Calcutta High Court in A.C.MUKHERJEE AND OTHERS Vs. UNION OF INDIA AND OTHERS 1972(2) LLJ 297 and of Kerala High Court in M.A.DAVID Vs. KERALA STATE ELECTRICITY BOARD 1973(2) LL.J. 466 in which it has been held that the Code of Discipline is not a statutory rule and violation of the said Code will not give the justification to entertain a Petition of Article 226 of the Constitution. But the Division Bench of the Madras High Court held that in case before the Calcutta High Court the point was not decided in the judgement and the matter went by admission. Where as regards the case before the Kerala High Court, it has been held by the Division Bench of Madras High Court that the decision of Kerala High Court had no application on facts to the case before them. No doubt the Division Bench of Madras High Court has held that writ under Article 226 of the Constitution of India by an union whose recognition is withdrawn is maintainable as the said action was taken without hearing the union and without assigning any reasons for derecognition. But it has been no where laid down in this case that "the Code of Discipline" has got statutory value or is a statutory provision. On the contrary, it has been held that it is not a statutory provision. That would be quite clear from the following observations in para No.6 on page 442:

"Admittedly there is no statutory provision in this case dealing with the question of

recognition or de-recognition. Equally admittedly the Code of Discipline in Industry is not statutory."

The writ was held maintainable as the action of derecognition was in violation of the principles of Natural Justice. Thus the said case is not of any help to Mr. Vasavada's client as well as Mr. T.R. Mishra's client.

11. Now apart from the above referred decisions of Division Benches of Calcutta High Court, Kerala High Court and Madras High Court, the Division Bench of this High Court in the unreported case of AMUL DAIRY KARMACHARI PARISHAD AND ANOTHER Vs. COMMISSIONER OF LABOUR AND OTHERS - Special C.A.No.7481 of 1991 decided on 22nd July, 1992 has held that a Writ Petition under Article 226 to direct the Labour Commissioner to conduct verification of the membership of a union in order to get recognition is not maintainable. There is also a reported judgment of a Single Judge of Bombay High Court in AIR CORPORATION EMPLOYEES' UNION Vs. G.B. BHIDE 40 F.J.R. 317 on the same issue. In this case after referring the decision of the Apex Court in G.J. FERNANDEZ Vs. STATE OF MYSORE - AIR 1967 S.C. 1753 and STATE OF ASSAM Vs. AJIT KUMAR SHARMA AIR 1965 S.C. 1196, the learned Single Judge has observed as under:

"These decision leave no room for doubt that the petitioners in the present case have no legal right conferred upon them as a result of Code of Discipline evolved at the 16th Sessions of Indian Labour Conference, or the "consensus of opinion" at the 22nd Sessions of that conference for enforcement of which they can maintain a petition under Article 226."

12. Mr. Vasavada has also cited before me the case of FOOD CORPORATION OF INDIA STAFF ASSOCIATION Vs. FOOD CORPORATION OF INDIA - AIR 1995 S.C. 1344. But the said case has no application to the facts before me. In that case the Industry/Employer and the workers unions had agreed to assess the representative character of trade unions and had submitted before the Honourable Supreme Court to lay down the procedure for holding elections for the purpose of said assessment.

13. Thus in view of all above discussion and the above referred decisions of various High Courts including

our own High Court the Labour Commissioner cannot consider and decide the question of giving recognition to trade union and cannot issue direction to the industry to hold election for the purpose of assessing the representative capacity of the trade unions. However if the Industry/Employer requests the Labour Commissioner that if/he wants to give recognition to that trade union which is having the majority membership and that the same i.e. the assessment of membership should be assessed by him then he should hold the election by following the principles laid down in above cited FOOD CORPORATION OF INDIA STAFF ASSOCIATION Vs. FOOD CORPORATION OF INDIA AIR 1965 S.C. 1344. It must be also laid down that when any trade union informs the Labour Commissioner about it's birth and claims of having the majority of the membership he should inform the Industry/Employer to take note of it and ask whether the Industry/Employer wishes to give recognition or not. On getting the reply from the Industry/Employer he should inform about the reply to the trade union. If the Labour Commissioner/Deputy Labour Commissioner follows such a procedure then the Industry/Employer whenever wants to have a settlement or dialogue it will have to call such union to have the settlement binding on all.

14. Thus I hold that the letter issued by the Deputy Commissioner of Labour dated 17-6-68 of Annexure E in Special Civil Appln. No.4773/98 is illegal and invalid and it is quashed and set aside. Thus both petitions Nos.S.C.A.No.4773/98 and S.C.A. No.4810/98 stand allowed. The prayer sought in Petition S.C.A.No.738/1998 is not tenable in law and hence the same petition must be dismissed. In the circumstances of the case, I direct the parties in all three petitions to bear their respective costs. Rules in Special Civil Appln.No.4773/98 and Special Civil Appln.No.4810/98 are made absolute. Rule in Special Civil Appln. No.738/98 is discharged. Copy of this judgment be kept in Special Civil Appln.No.4810/98 as well as in Special Civil Appln.No.4773/98.

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